

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JULIE, KENNY, AND KATIE
BARTON,

Plaintiffs,

-VS-

OVINTIV MID-CONTINENT, INC.,

Defendant.

Case No. CIV-20-1098-F

ORDER


The court is in receipt of the Stipulation of Dismissal With Prejudice of Only Plaintiffs' Strict Liability Claim (doc. no. 37) (Stipulation) and the Joint Motion for Deadline Extension for Dispositive and Daubert Motions (doc. no. 38) (Joint Motion), both filed February 24, 2022. Upon review, the court **ORDERS** as follows:

1. The Stipulation is construed as a motion for leave to amend the Second Amended Complaint. *See, Gobbo Farms & Orchards v. Poole Chem. Co.*, 81 F.3d 122, 123 (10th Cir. 1996) (Rule 41(a), Fed. R. Civ. P., speaks to dismissal of an action, not just a claim, and does not apply to dismissal of less than all claims in an action); 9 Wright & Miller, Federal Practice & Procedure, § 2362 (4th ed.) (“[W]hen multiple claims are filed against a particular defendant, Rule 41(a) is applicable only to voluntary dismissal of all claims against the defendant[.]”); *see also, Royal Pacific Limited v. Faith Electric Manufacture Company, Ltd.*, 322 F.Supp.3d 1178, 1183 (D.N.M. 2018) (dismissal of some claims should be done by amending

complaint pursuant to Rule 15, Fed. R. Civ. P.). So construed and mindful that the court should “freely give” leave to amend when justice so requires, *see*, Rule 15(a)(2), Fed. R. Civ. P., the motion is **GRANTED**. The Second Amended Complaint is **DEEMED** amended to drop plaintiffs’ “Fourth Claim for Relief: Strict Liability” against defendant.

2. The Joint Motion is **GRANTED**. All dispositive and Daubert motions are to be filed no later than March 7, 2022.

IT IS SO ORDERED this 24th day of February, 2021.



STEPHEN P. FRIOT
UNITED STATES DISTRICT JUDGE

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